[APPELLATE CRIMINAL JURISDICTION]
McELWAINE, C.J.
April 7, 1937.

CHIAH TIAN vs. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 13 OF 1937]

Liquors Revenue Ordinance (Cap. 225) s. 28 —possession of dutiable liquor without knowledge.

The mere fact that a parcel found to contain dutiable liquor was handed by a rickshaw puller to the appellant's daughter was seized by a revenue officer before she had time to examine its contents, unaccompanied by any circumstance indicating that the girl or the appellant knew it was liquor or intended to retain it, does not constitute possession within the meaning of, and therefore is not sufficient to support a conviction under, section 28 of the Liquors Revenue Ordinance (Cap. 225).

A person is not guilty of the offence of possession if he is not aware of the possession. There must be some evidence from which it can reasonably be inferred that the accused knew the general nature of the thing alleged to be in his possession, such as length of time he had the object, evidence that he was expecting it, evidence of course of business, or any other evidence from which an inference of the general nature of the thing can be inferred.

MAGISTRATE'S APPEAL

This was an appeal against the conviction by the Police Magistrate of one Chiah Tian under section 28 (1) of the Liquors Revenue Ordinance of being in possession or control of dutiable liquor. The appeal was heard before McElwaine, C.J. on the 22nd day of March, 1937. At the conclusion of the argument the Chief Justice allowed the appeal but gave his reasons in writing later.

Fung for the appellant.

E. N. Taylor Deputy Public Prosecutor for the Crown.

McELWAINE, C.J.—The Appellant appeals against his conviction under section 28(1) of the Liquors Revenue Ordinance for having in his possession or control dutiable liquor.

The facts very shortly are that the appellant is a licensee under section 38. It is immaterial for the purposes of this case that the licence had expired a couple of days before.

On information received revenue officers were watching appellant's premises at 9.30 a.m. on 5th January when they saw a rickshaw coming along the back lane and stop at the back door opening into a yard at the back of the appellant's premises. The rickshaw puller knocked at the back door which about a minute later was opened by a young girl of 14 or 15 years of age, a daughter of appellant, to whom the rickshaw puller handed a parcel. One of the watching revenue officers at once rushed forward pushed open the door and entered the yard. The girl dropped the parcel and ran to the house.

The parcel was found to contain rubber inner tubes full of dutiable liquor.

No point was made on the appeal that there was not satisfactory evidence as to the contents of the tubes. A sample was taken from the tubes by Mr. Johnston, an Assistant Superintendent of Excise, who appears to have sent it and a bottle found in the liquor shop to the Government Analyst. At the trial these were referred to as exhibits H. and F. They were brought by Revenue Officer No. 28 to the Government Analyst and the same officer received them back with the Analyst's report which states that the Revenue Officer handed him two bottles marked Exhibits B and C respectively that on examination B was found to contain samsoo of spirit strength 64.4% proof, and "C" was found to contain samsoo of spirit strength 49.2% proof.

It is impossible to say from the evidence whether B or C referred to the liquor in the tubes though doubtless one or other of them did. Under the circumstances as each contained samsoo the matter is not important but this kind of vagueness would suffice to upset a conviction if either B or C contained non-intoxicating liquor as if that had happened there would be no evidence that the tubes contained intoxicating liquor.

At the time the revenue officers made this seizure the appellant was absent from the premises at a fish shop which he also ran on other premises.

A search was made of his premises which were well stocked with bottles of liquor to which no suspicion apparently attached. The contents of the inner tubes only, was the liquor the subject of the charge.

The Crown case was argued on the basis that the girl was a servant employed by her father "in the course of his business as such licenced person," that on receiving the parcel she became in possession of it for the licensee who thereby became guilty of an offence under section 87.

The only evidence on this point was that the girl was in no way employed about the liquor business though she helped in the house—the liquor shop was where appellant resided with his family. Her mother had charge of the shop when appellant was absent.

I attach no significance to the fact that the girl ran when the revenue officer pushed his way into the yard. A girl of 14 or 15 may well have been frightened. I do not infer guilty knowledge from her conduct nor apparently did the magistrate.

There is a great deal of force in the learned Deputy's argument that in these family liquor shops where no outside help is employed the whole family may act as agents or servants of the head of the family. This may very well be true but I hesitate to say that the mere answering of a knock at the door constitutes a person

a servant employed in the licenced business if the parcel she receives contains samsoo, but not if it contains bread. Of course if there was evidence that the licensee expected to receive dutiable liquor and that he sent his daughter to receive it she would be a servant though she were perfectly innocent of all knowledge that there was anything wrong.

This case turns on was there possession? The dutiable liquor was not on the premises for more than a matter of seconds before the revenue officer seized it. The appellant was absent so he knew nothing of the possession and there is no evidence that he expected the liquor.

There can, of course, be an offence committed through a servant who is in possession of dutiable liquor in the course of the servant's employment. Section 87 makes that abundantly clear.

But I am not satisfied that either the girl, or her father through her agency, had such possession as is necessary to constitute an offence under section 28. In my opinion possession to be an offence must be possession under such circumstances that a Court is justified in finding that the accused (or the servant in cases of constructive possession) was conscious of the possession. As Pollock, C.B. put it in *The Queen* v. *Woodrow*, 16 L.J., M.C., 122 "a man can hardly be said to be in possession of anything without knowing it" and I think that a person is not guilty of the offence of possession if he is not aware of the possession. There must be some evidence from which it can reasonably be inferred that the accused knew the general nature of the thing alleged to be in his possession, such as evidence of length of time he had the object, evidence that he was expecting it, evidence of course of business, or any other evidence from which an inference of knowledge of the general nature of the thing can be inferred. I use the words "general nature of the thing" advisedly. Under section 76 of this Ordinance it is not the duty of the prosecution to prove that the liquor is dutiable. Nor, I conceive, is it a defence to prove to the satisfaction of the Court that the accused did not know the liquor was dutiable. The section is absolutely prohibitory. To quote again from Pollock, C.B in *Woodrow's* case "For reasons probably very sound, and not applicable to this case only, but to many other branches of the law, persons who deal in an article are made responsible for its being of a certain quality. If this were a case of provisions, or of any matter that affected the public health, it would not be at all unreasonable to require persons dealing in these to be aware of their character and quality, and to be responsible for their goodness, whether they know it or not; they are bound to take care."

Woodrow was a tobacconist: some of the tobacco he had for sale was adulterated. He was held to be guilty of the offence of having in his possession adulterated tobacco contrary to 5 and 6 Vict. ch. 93 section 3.

Woodrow knew the general nature of the thing he possessed—tobacco. He was guilty because that tobacco which he knew he possessed was adulterated.

Turning to the facts of the present case, what have we? A wrapped up bundle or parcel. The eye could not detect its contents, whether bread, clothes or any other commodity. From the Revenue Officer's evidence the girl cannot have had the parcel in her hand for more than a matter of seconds before it was under the control of the officers. A reasonable explanation is given. Had the girl or her father, the appellant, examined the contents he would quickly have discovered that it was liquor—but there was no time for examination. There is no evidence that she knew or had reason to believe it was liquor, or that the father expected the liquor, nor is there any other circumstance from which knowledge that the parcel contained liquor could be inferred unless it is the finding of the partly full bottle of liquor found behind the counter and which appears to have contained samsu. It is not suggested that this bottle was contraband.

To hold that possession such as I have described, with no circumstance indicating that the girl or the appellant knew it was liquor and intended to retain it and when a reasonable explanation of the possession is given, constitutes the possession which is an offence would have monstrous and absurd results. Suppose no revenue officer was there and that the appellant on opening the parcel and seeing what it contained at once brought it to the Excise Department would he be guilty of an offence while it was on his premises or while he was on his way to report the matter to the authorities?

Would a postman or the Director General of Posts and Telegraphs be guilty if an apparently innocent parcel in course of transmission by post were found to contain opium, dutiable liquor or dutiable tobacco? Will the picker-up of a parcel by the roadside be guilty of an offence if he carries it to the nearest police station to hand it over as lost property if on opening it it is found to contain contraband? Or would a person into whose pocket a package of Red Lion Chandu had been slipped unawares to him be guilty of possession before he knew it was in his pocket?

In the present case the defence was that the whole affair was a plant. If the possession of the appellant was even in this case an offence, such a defence would be irrelevant,—there was possession. Nay, the prosecution might have

called the "planter" to prove the contraband character of the contents of the parcel and that he had seen it in the hands—in the possession—of the person to whom he had delivered it.

The attention of the magistrate does not appear to have been drawn to this aspect of the case, so far as the appellant was concerned, but it will be noticed that he acquitted the rickshaw puller who unquestionably was in possession of the liquor if the prosecution evidence that there was no passenger in the rickshaw is accepted—though perhaps not guilty possession.

The magistrate's whole attention in the appellant's case appears to have been directed to the question of the girl being a servant or agent.

There is one passage in the grounds of judgment which is striking when compared with the evidence of the rickshaw puller and the girl that there was a woman passenger in the rickshaw and of the revenue officers that before was no woman passenger "I believed that the liquor was *either brought* or received into the house by the daughter."

Now according to the prosecution evidence the parcel was in the yard "I was in the back yard guarding Exhibit E" (the liquor) swore Revenue Officer No. 28. What then was the meaning of "either brought or received"? Was the magistrate inclined to believe the rickshaw coolie that there was a woman passenger and that the girl was that passenger? If that story which was contradicted by the Crown witnesses was true then there would be good ground for inferring that the girl was sent for the parcel and that the appellant knew what he was expecting to receive, but this story is entirely contradicted by the prosecution evidence.

The magistrate says "Another lot of liquor, of which exhibit F was one bottle, was found in the shop." Assuming that Exhibit F is one of the exhibits referred to as Exhibit A or B by the Government Analyst and which contained samsoo, there is nothing in the case to suggest that that bottle was itself dutiable liquor. I put the case down for further argument on this point and Mr. Storr who appeared for the Crown at the rehearing informed me that Exhibit F was not alleged to be illicit and was only produced in support of another charge which has nothing to do with the present appeal.

If that bottle contained dutiable liquor it might afford some evidence that the possession of the parcel which formed the subject of the charge was possession with knowledge.

In my opinion the very short possession proved in this case, unaccompanied as it was by any other circumstance, of a closed parcel is not sufficient to support the conviction.

I therefore allow the appeal, set aside the conviction, and direct the fine if paid to be refunded to the appellant.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

HORNE, J.

April 10, 1937.

IN THE MATTER OF THE STAMP ORDINANCE (CAP. 228).

THE SINGAPORE IMPROVEMENT TRUST.... **Appellant**

v.

THE COMMISSIONER OF STAMP, S.S..... **Respondent**

[SPECIAL APPEAL No. 1 of 1937.]

Stamp—land acquisition for back lane purposes—ad valorem duty—Municipal Ordinance (Cap. 133) S. 148 (5).

An instrument executed under S. 148 (5) of the Municipal Ordinance by the Singapore Improvement Trust purporting to be a record of an acquisition of land made by the Municipal Commissioners in pursuance of an order passed by the Governor in-Council is 'a conveyance' within the meaning of, and is liable to *ad valorem* duty under, the Stamp Ordinance (Cap. 228).

Horsfall v. *Key*, (1848) 17 L.J. Exch. 266; *Garnett* v. *Inland Revenue Commissioners*, (1900) 81 L.T. 633 applied and followed.

CASE stated by the Commissioner of Stamp, Straits Settlements, under s. 40(2) of the Stamp Ordinance (Cap. 228) for determination by the High Court.

Laycock for the appellant.

Gibson, Solicitor General for the respondent.

Cur. Ad. Vult.

HORNE, J.—In this case stated the question raised is whether the instrument executed by the Singapore Improvement Trust under section 148 (5) of the Municipal Ordinance is liable to *ad valorem* duty under the Stamp Ordinance.

The argument of the appellants is that the document does not transfer anything and that by the subsection (5) it is the act of registration which transfers the estates.

For the respondent on the other hand the Solicitor-General submits that the registration merely postpones the operation of the transfer, which exists in fact, and that the document, whatever may be said as to its form, effects the transfer.

Inland Revenue Commissioners v. *Angus*, 23 Q.B.D. 579 has been cited in support of the appellants' contention. I accept the view as expressed by Lord Esher, M.R. at p. 589 where he says:—

> "The taxation is confined to the instrument whereby the property is transferred. The transfer must be made by the instrument."

This case deals with what is described as a